



EP Rulings and Agreements

# Internal Revenue Service

Determination Letter Process –  
Current Status and Future Ideas

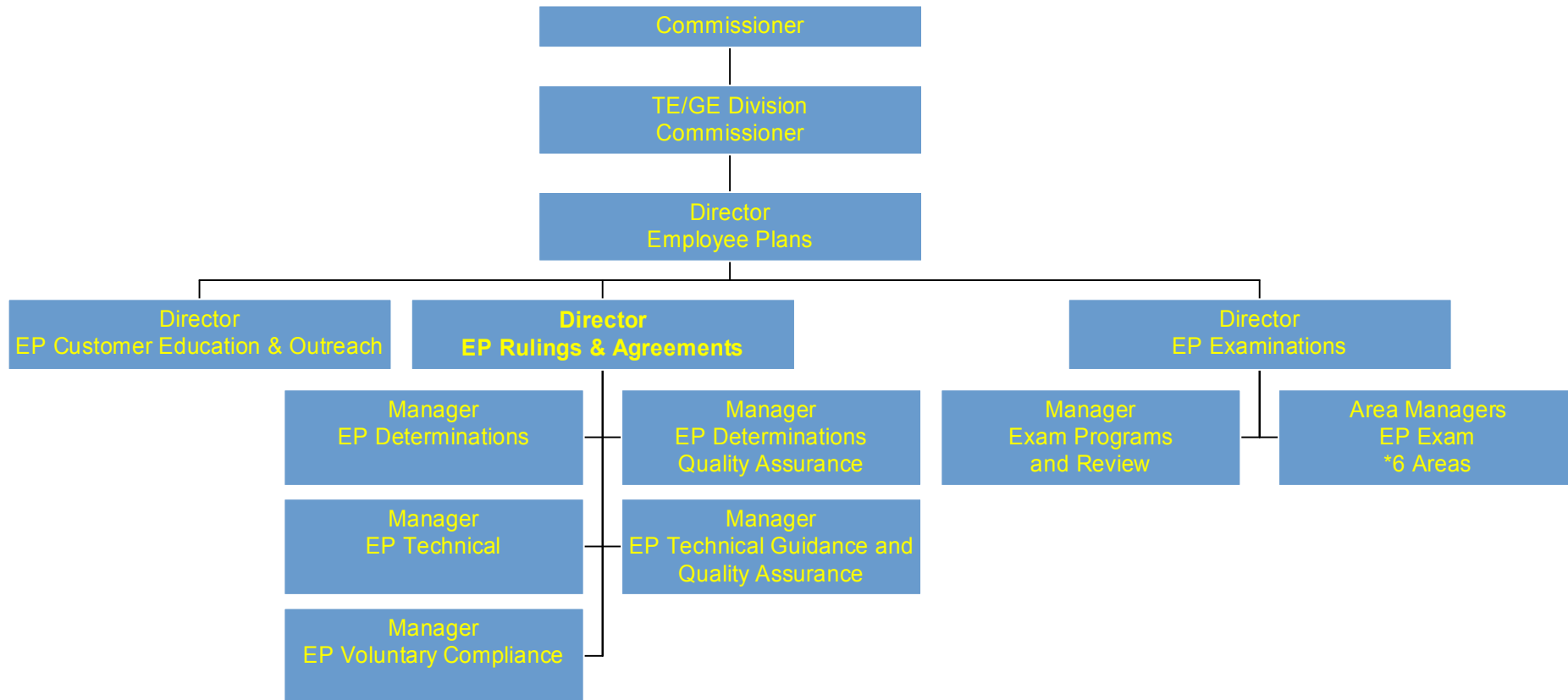


# Mission Statement

- ✓ The mission of the Tax Exempt and Government Entities Operating Division is to provide our customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.



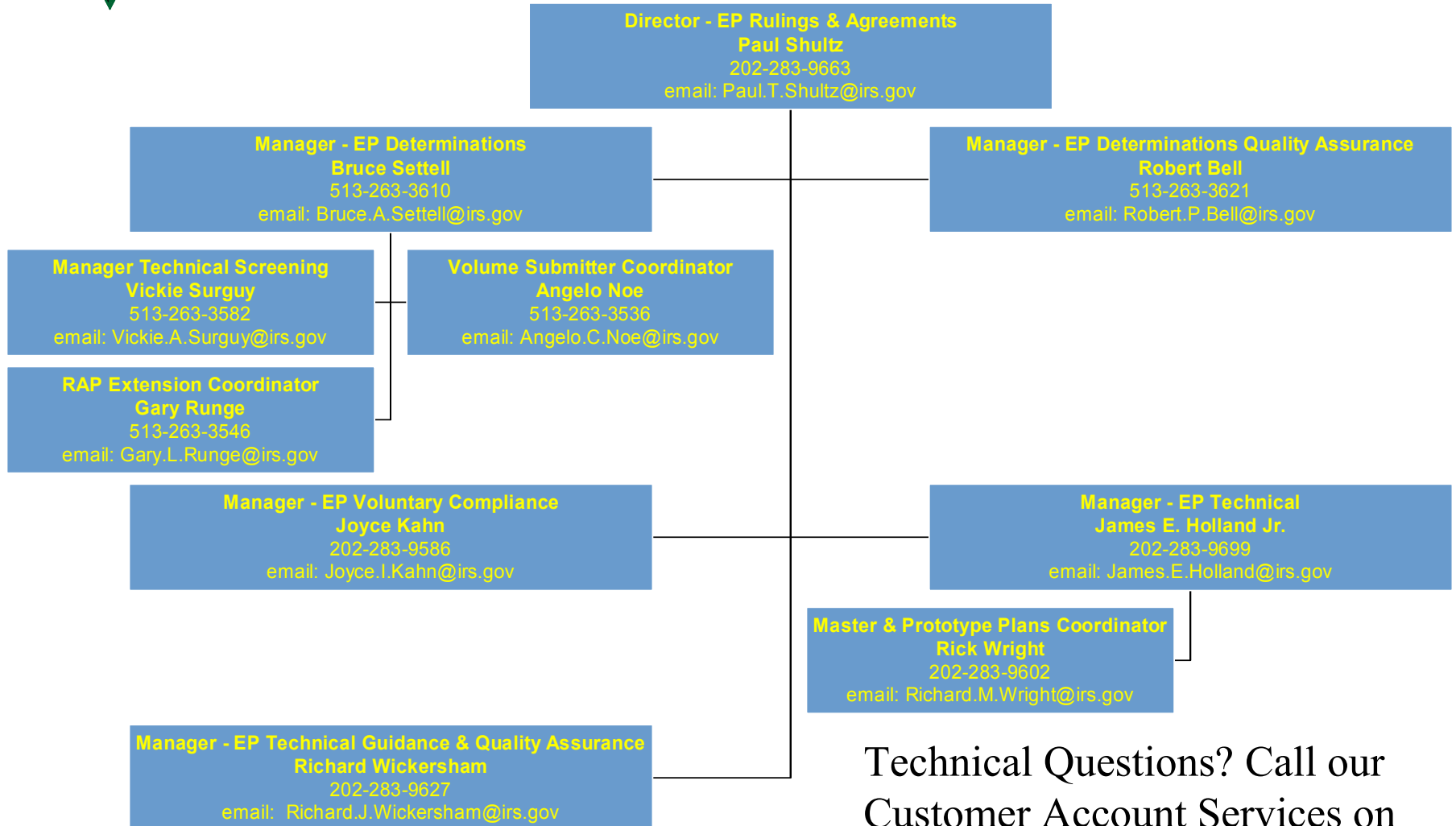
# Tax Exempt /Government Entities





EP Rulings and Agreements

# EP – Rulings and Agreements



Technical Questions? Call our  
Customer Account Services on  
1-877-829-5500



# Key Features of Centralized Determinations (in Cincinnati)

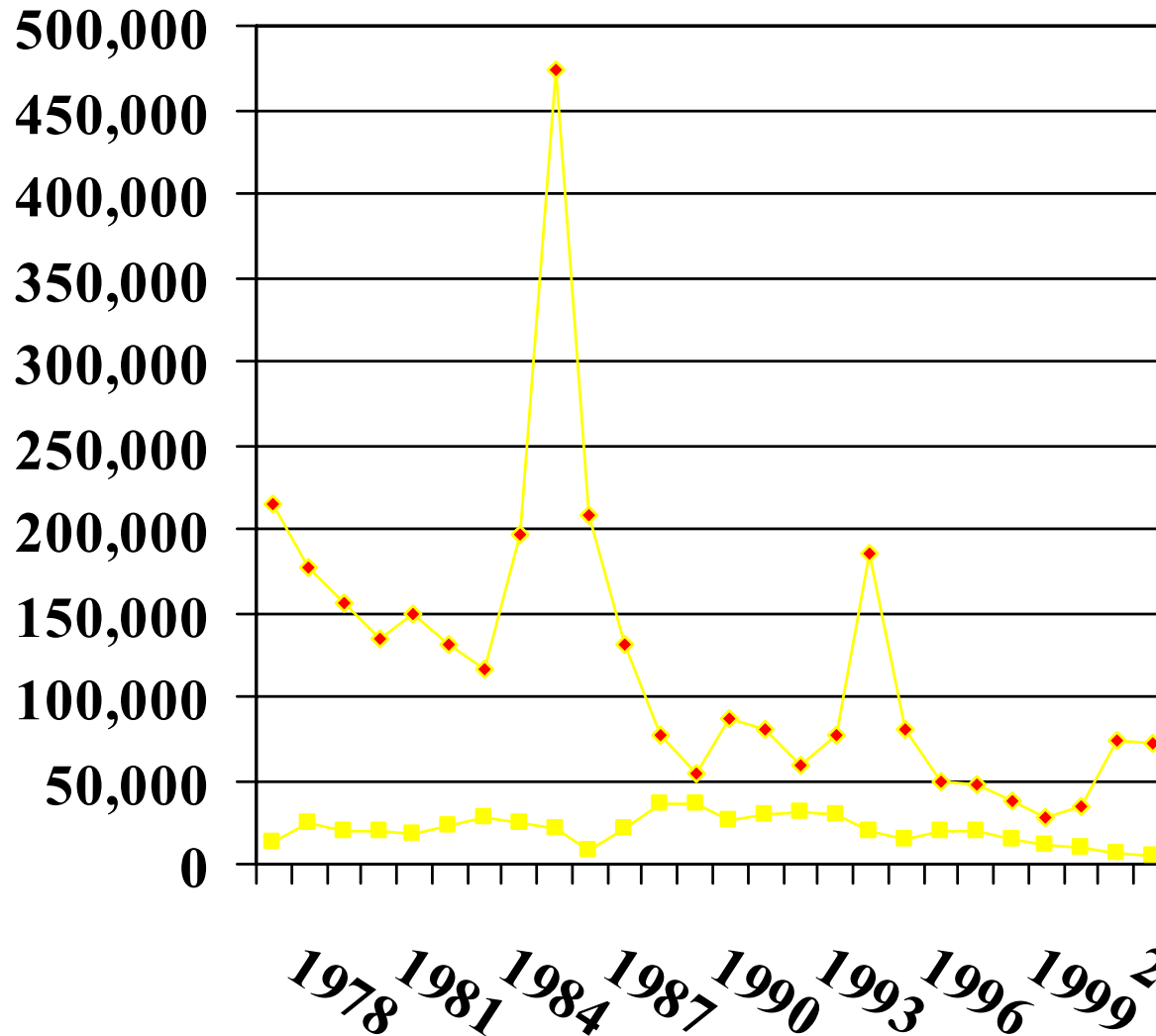
- Clerical processing and depositing functions in one place
  - Generates efficiency and cost savings
- Consistency in program nationwide
  - Program direction and implementation
  - Technical and procedural guidance on determinations
  - Controls Volume Submitter & Technical Screening Programs
- Areas can focus on exams
  - Six EP area managers -

Pacific Coast (LA)	Northeast (Brooklyn)
Great Lakes (Chicago)	Mid-Atlantic (Philadelphia)
Gulf Coast (Dallas)	Central Mountain (Denver)
  - Area agents also work on determinations



EP Rulings and Agreements

# Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002 GUST



# Receipts through September 30

Forms 5300/5303	40,000
-----------------	--------

Forms 5307/6406	25,000
-----------------	--------

Form 5310	10,000
-----------	--------

Total as of September 30:	75,000
---------------------------	--------



# “GUST” Projected Receipts

- ✓ GUST RAP -- Fourth since ERISA
  - Total Applications Expected over FYs 2002 & 2003
    - Normal year 30K
    - Expected over 2 years 275K
    - Now 160K
  - IDPs (on 5300)
    - Expected 100K
    - Now 50K
    - So far 35K
  - Pre-approved Plans
    - Expected 175K
    - Now 90K

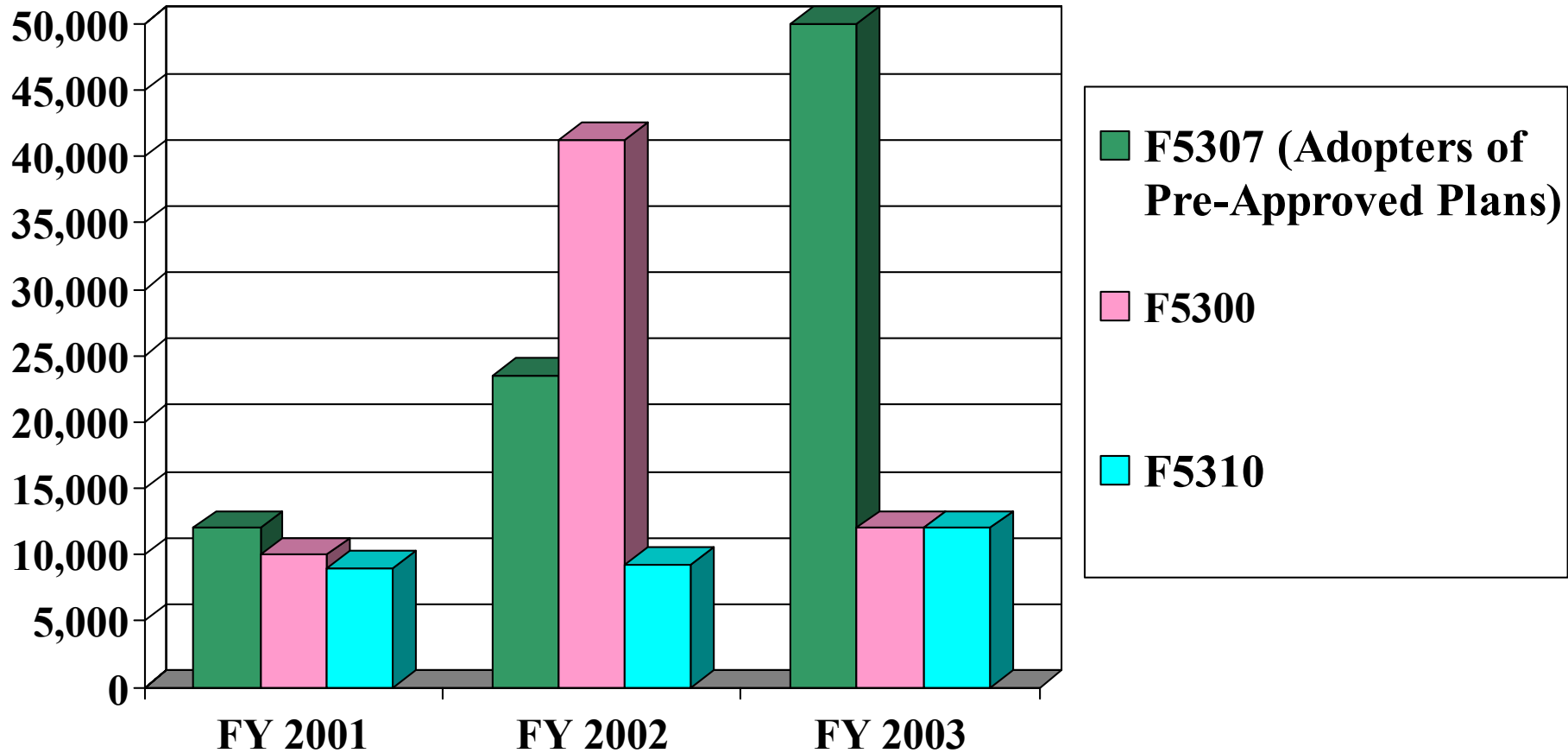






EP Rulings and Agreements

# “GUST” Projected Receipts





# “GUST” Projected Receipts

## ✓ Why fewer applications?

### – IDPs:

- Migration to pre-approved plans
- Disaster delays to 6/30 (minimal impact)
- Certificate usage

### – Pre-approved plans:

- Optional filing for word for word adopters





# Issues Affecting Receipts

- Completion of Volume Submitter/Master & Prototypes
- Impact of Streamlining Guidance (Announcement 2001-77)
  - “Word-for-word” (plain vanilla) adopters
  - Making Nondiscrimination Test Optional
- Impact of RAP Extension (Rev.Proc. 2001-55)
  - Extension of Remedial Amendment Period for plans whose plan year ends by 2/28/02



# IRS Pre-Approved Plans

(Listed at [www.irs.gov/ep](http://www.irs.gov/ep))

## **Master & Prototype Specimens**

- 214 sponsors submitted plans by 12/31/00 for GUST
- 955 plans total
- Reviewed in Washington D. C.
- Projected adopting employers seeking a determination letter – 35,000
- Number of adopting employers: More than one half million (primarily standardized plans)

## **Volume Submitter Plans**

- 350 sponsors submitted plans by 12/31/00 for GUST
- 1,000 plans total
- Reviewed in Cincinnati and the areas
- Projected adopting employers seeking a determination letter – 40,000



# Staffing for FY 2001-2003

## **FY 2001**

- 150 Agents Total
  - 50 Agents in Cincinnati
    - (35 doing technical screening)
  - 100 Agents working determinations in their respective geographic locations

## **FY 2002 & 2003**

- 288 Agents Total
  - 60 Agents in Cincinnati
    - (25 doing technical screening)
  - 228 Agents working determinations in their respective geographic locations
    - (75 doing technical screening)

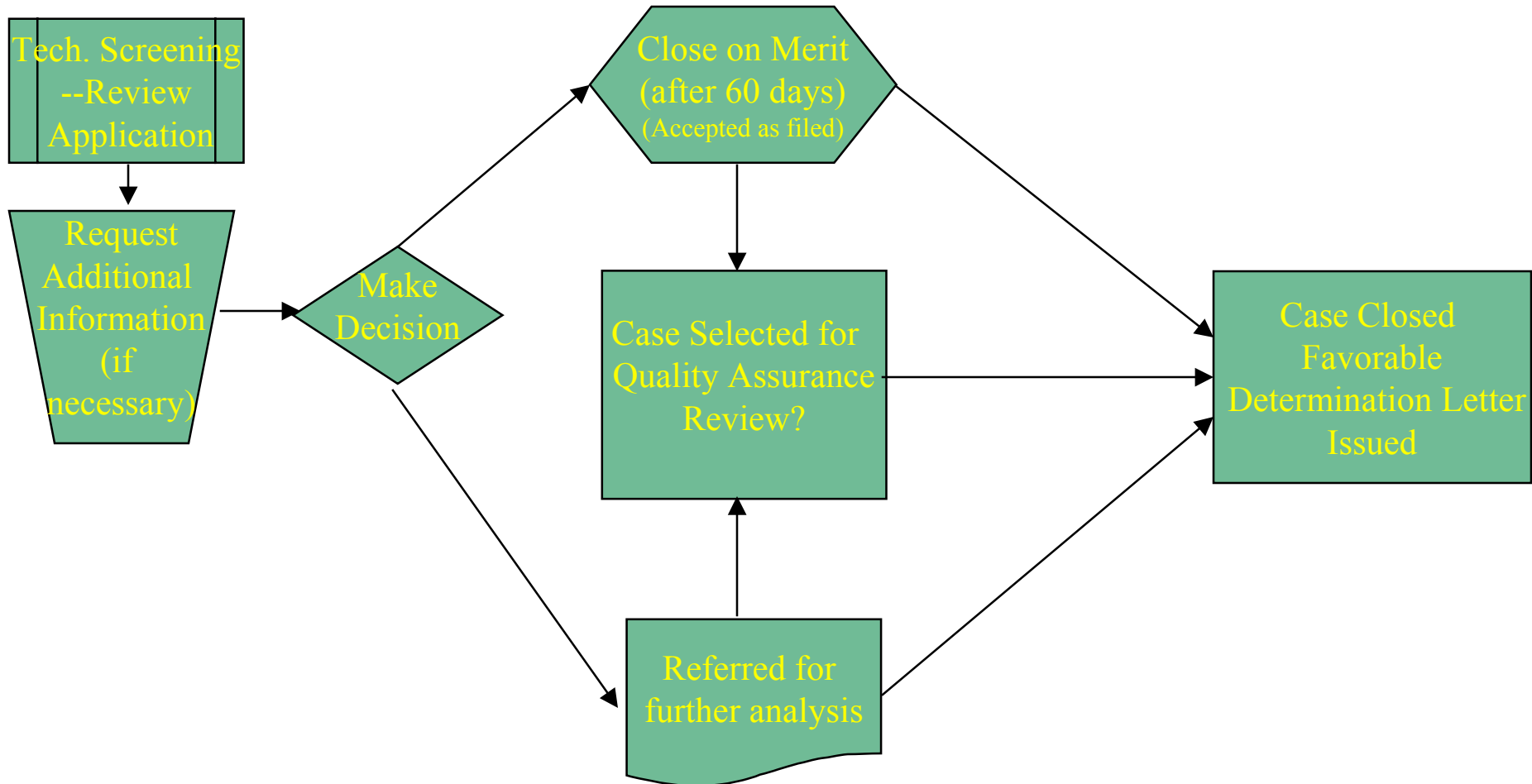


# Determination Letter Application Workflow

- Processed at the Covington Processing Service Center and forwarded to Cincinnati
- Technically Screened
  - Accepted as filed
  - Referred for further analysis
- Closed
- Files stored at Federal Records Center (10 years)



# Determination Letter Application Workflow Process





# Priority Focus - due to Increase in Receipts

- Emphasis on closing Volume Submitter/Master & Prototype Plans (99% M&P & 97% VS closed to date).
- Limited Streamlining of the Closing Agreement Program procedures for non-amenders -- Rev. Proc. 2002-35 published.
- Re-visit incorporation by reference (no promises).
- Rev. Proc. 2002-42 published affecting mergers of money purchase plans into profit sharing plans.





# Priority Focus - due to Increase in Receipts continued

- Priority placed on technical screening to satisfy the most customers as early as possible
  - Five off-site screening centers established

## Site

Atlanta

Los Angeles

Chicago

Baltimore

Brooklyn

## Opened

October 2001

November 2001

January 2002

February 2002

February 2002



# Priority Focus - due to Increase in Receipts continued

- “Soft Guidance on Hot Topics”
- News articles cover the following issues of concern
  - Clarification of “word-for-word” adopters
  - Merged plans
  - GUST restatements, including “tack-on” amendments
  - Incomplete applications
  - Acceptable changes to Volume Submitter or Master & Prototype Plans
  - Non-discrim’n testing -- sampling allowed
- IRC 415/417(e) LRMs revised – all three “old-law benefits” methods allowed



# Other Customer Service Steps

## ➤ Liaison with Customers

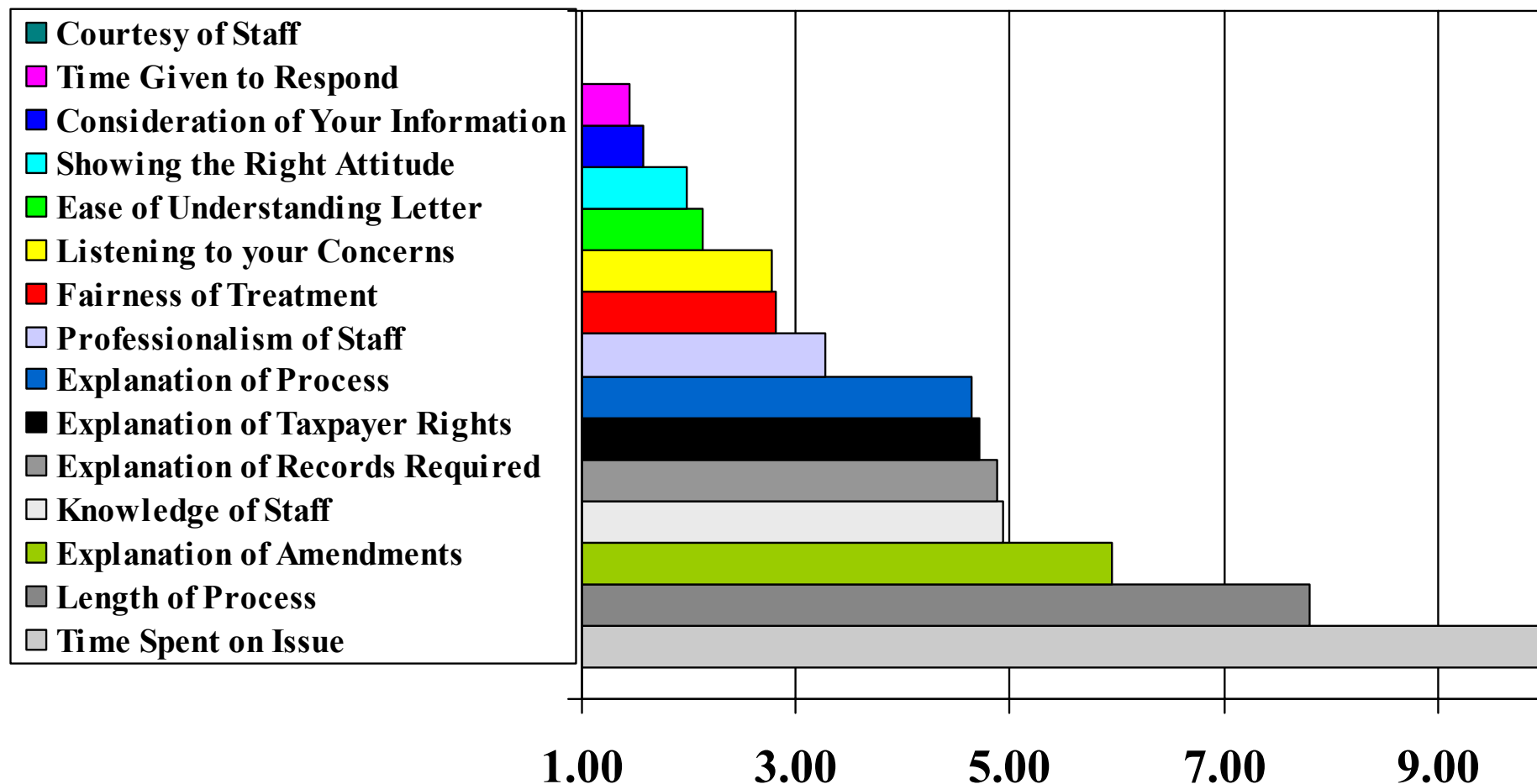
### Via Customer Education & Outreach Activities

- Provide newsletter
- Attend benefit conferences
- Meet with associations & practitioner groups
- Post updates to web site: [www.irs.gov/ep](http://www.irs.gov/ep)
- Participate in liaison group for determinations
- Provide updates to e-mail distribution list
- Review/make recommendations based on customer survey



# Customer Survey Feedback

(Areas for Improvement - Based on the Likert Scale)





# Program Streamlining Steps Taken

- “Streamlined” the current program (Ann. 2001-77):
  - Filing of application (5307) optional for “word for word” adopters of pre-approved plans
  - Nondiscrimination proof (Schedule Q) optional
  - Requested highlight of changes in restated plans
  - Multiple employer plans – app. from one adopter OK





# Program Streamlining Steps Taken

continued

- “Streamlined” the current program (Ann. 2001-77):
  - Revised Schedule Q and Forms 5300, 5307, 5310 & 6406. Internet forms can be used for submissions.
  - Eliminated Form 5303
  - Discontinued coverage/nondiscrimination caveats
  - Simplified calculation of 12 month rule (end of RAP) for adopters of Pre-Approved Plans (12/31/02)





# Creating an Electronic Application & Processing System

## ➤ Technology improvements to DL program:

- Staged releases of new program starting with Forms 5307 in late 2002 (first release)
- Later releases will include:
  - Imaging entire submission, including plan, application and supporting docs
  - Permitting electronic filing, fees and correspondence
  - Moving cases electronically
  - Retaining and retrieving up-to-date information
  - Providing customer self-service options: online access, complete forms, check status, obtain copies of letters, etc.



# Helpful Hints on How to Help Processing

- To expedite processing of determination applications:
  - Include all attachments, schedules, and demonstrations with application
  - Include copy of last determination letter or prior plan document
  - Highlight language changes
  - Group “like” cases together





# Common Recurring Issues

## ➤ Plans are failing to:

- Provide the correct form adjustments when a benefit is subject to IRC 415(b)(2)(e) and failing to use the correct effective date
- Specify if they intend to utilize top-paid group or calendar year elections for any or all years. See IRC section 414(q) and Notice 97-45
- Remove the requirements of family aggregation for purposes of the definition of HCE (IRC 414(q)) and for purposes of limiting compensation (IRC 401(a)(17))



# Common Recurring Issues continued

- Plans are failing to provide:
  - the required amendments
  - the reason(s) for excess annual additions
  - the correct definition of Required Aggregation Group as required by IRC 416(g)
  - the correct effective dates for changes made by GUST law
  - both the ratio leveling and dollar leveling for disposing of excess deferrals and/or excess aggregate contributions
  - designate the method of correcting the Multiple Use Test.
- Good Reference for Info: Q&As @ [www.irs.gov/ep](http://www.irs.gov/ep)



# Integrating GUST-Related Amendments into Application

- Plans *may* include amendments implementing final cross-testing Regs. (eff. PYs 1/1/2002 and later) – acceptable in all plans, including VSs, but not M&Ps
- Elective Transportation Fringe Benefits (IRC 132(f)) included in compensation per CRA '00 – Notice 2001-37 provides model amendment -- mandatory amendment!
- Minimum Distribution Final/Temp. & Prop. Regs. (IRC 401(a)(9)) -- Rev. Proc. provides model amendment to comply with IRC 401(a)(9)



# EGTRRA's Impact during the GUST RAP

## ➤ EGTRRA

- IDPs may include EGTRRA amendments in GUST plan documents
  - Pre-approved plans may include EGTRRA amendments, but must be in the form of a separate, clearly identified addendum to the plan
- But IRS will not rule on EGTRRA changes now
- Notice 2001-42 explains the term “timely adoption of good faith amendments”
- Notice 2001-57 provides IRS sample “good faith” amendments
- Separate 401(b) period for EGTRRA (last day of 2005 PY)



# Future of the Determination Letter Program

Is there a better way to:

- Simplify the cumbersome process?
- Utilize resources available?
- Reduce the amount of time spent by all parties?





# “White Paper”



- Compendium of Brain-Storming Ideas (Ann. 2001-83)
  - Current process (complex)
  - Possible alternatives
  - Implementation 5-10 years
  - Comments were due by 7/01/02
  - Summary of comments to be published; revised White Paper
- Public dialogue (your input) is crucial



# “White Paper” (Options)



- Maintain Status Quo
- Eliminate DLs (all plans) – provide model plans for employers who want reliance
- Eliminate DLs for Individually Designed Plans – continue letters for sponsors of pre-approved plans (M&Ps, VS)

## Alternatives:

- Continue Opinion/Advisory letters, but no DLs for adopters
- Continue Opinion/Advisory letters and DLs for adopters



# “White Paper” Options

continued

- Third-party Certification System
- Self-certification System
- Annual Registration (Schedule to 5500?)
- Issue DL Only at Initial Adoption and Termination
  - Alt: Annual Registration in between







# “White Paper” Options continued

## ➤ Stagger Expiration of the 401(b) RAP

- Alt: Stagger the RAP But Require Immediate Amendments for Law Changes

## ➤ Immediate Amendment for Law Changes & Again for Guidance-Required Changes

- Alt: Immediate Amendment for Law Changes and Cyclical Amendments for Guidance-Required Changes



Note: Consider mixing and matching various options.



# Customer Concerns

- Reliance key to employers – value of 7805(b) relief
- Large complex plans want DLs
- Impact of DL on operating compliance





# Other Issues

- Cookie cutter plans
- Model provisions
- Model plans
- Small employer compliance
- Third-party administrator responsibilities





# Partner With Us

- How can we improve the current program?
- Help us identify issues needing greatest guidance/publicity
- Prioritize guidance projects
- Dialogue on White Paper – “What is your favorite option?”





# Contact Information

- Paul Shultz  
202-283-9660  
Paul.T.Shultz@irs.gov
  - Robert Bell  
513-263-3567  
Robert.P.Bell@irs.gov
  - Bruce Settell  
513-263-3610  
Bruce.A.Settell@irs.gov
- E-mail is the preferred method of contact.

Technical Questions? Call our  
Customer Account Services on  
1-877-829-5500

EP Guidance & General Information is  
available at [www.irs.gov/ep](http://www.irs.gov/ep)

